

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

MARGARET MARSHALL

Chief Justice

1. Court Submitting Rules for Approval:

Appeals Court

2. Date Rules Submitted for Approval:

September 9, 2008

3. Date Approved and Promulgated by the Supreme Judicial Court:

September 18, 2008

4. Rules or Rules, or Amendments Thereto, Approved and Promulgated:

Amendment to Appeals Court Standing Order Concerning

Dismissal of Appeals and Reports in All cases for Lack of

Prosecution

Effective date - October 1, 2008

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)



COMMONWEALTH OF MASSACHUSETTS
THE APPEALS COURT
BOSTON, MASSACHUSETTS 02108

PHILLIP RAPOZA
CHIEF JUSTICE

September 9, 2008

Honorable John M. Greaney
Chair, Rules Committee
Supreme Judicial Court
John Adams Courthouse
One Pemberton Square
Boston, MA 02108

Dear Justice Greaney:

Enclosed please find an order of the Appeals Court amending the last sentence of our Standing Order Concerning Dismissal of Appeals and Reports in All Cases for Lack of Prosecution.

This Standing Order (also known as Standing Order 17A) has been in effect for many years. As you know, it provides a mechanism for the dismissal of an appeal in a case where the appellant's brief has not been timely filed. It is extensively used; in FY08, for example, 184 cases (almost nine per cent of all cases) were dismissed under the Standing Order.

The final sentence of the Standing Order, in its present form, provides for the reinstatement of a criminal case dismissed thereunder solely if the appellant can show "the existence of a meritorious case." The proposed amendment, which adds a ground for reinstatement, is intended to conform the Standing Order to the holding in Commonwealth v. Alvarez, 69 Mass. App. Ct. 438, 441-443 (2007), which recognized that, in "a case where counsel's shortcomings during the appellate process have altogether deprived a defendant of review on direct appeal. . . the defendant is not required to specify or argue the appellate issues that he would raise were his appeal reinstated." See also Commonwealth v. Frank, 425 Mass. 182, 184 (1997); Evitts v. Lucey, 469 U.S. 387 (1985). Thus, the new last sentence will permit reinstatement of a criminal case upon a showing of either (a) the existence of a meritorious case (which would continue to be the standard for reinstatement of a postconviction or collateral appeal, or a direct appeal not governed by Alvarez) or (b) that the right to appeal was vitiated due to an act or omission of counsel (the Alvarez standard).

Because the amendment will conform the Standing Order to established case law, we do not deem it necessary to solicit public comment. I respectfully request that the Supreme Judicial Court approve the order amending the above Standing Order of the Appeals Court.

Very truly yours,

A handwritten signature in black ink, appearing to read "Phillip Rapoza", with a long horizontal flourish extending to the right.

Phillip Rapoza
Chief Justice

PR/md

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

APPEALS COURT

**ORDER AMENDING STANDING ORDER CONCERNING DISMISSAL OF APPEALS
AND REPORTS IN ALL CASES FOR LACK OF PROSECUTION**

The Appeals Court Standing Order Concerning Dismissal of Appeals in All Cases for Lack of Prosecution is hereby amended by striking the last sentence and inserting in its place the following sentence:

A dismissal of an appeal in a criminal case may be vacated by a panel of the justices after the expiration of said fourteen days upon a showing either (a) of the existence of a meritorious case or (b) that the defendant was deprived of his right of direct appeal as a result of an act or omission of counsel after the appeal had been entered in this court.



Phillip Rapoza



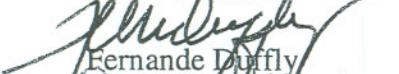
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Barbara Lenk



Andre Gelinas



Fernande Duffly



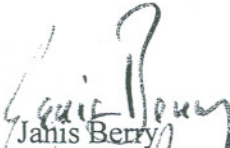
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Marc Kantrowitz



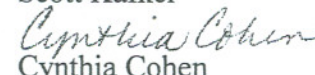
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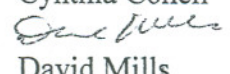
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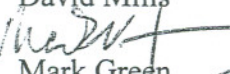
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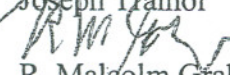
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R. Malcolm Graham



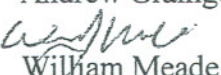
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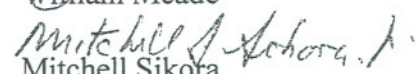
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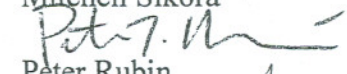
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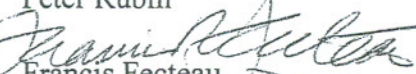
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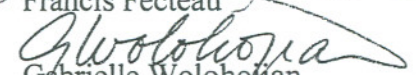
Mitchell Sikora



Peter Rubin



Francis Fecteau



Gabrielle Wolohojian